IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL No. 02-CR-131
	:	
KHALIL ABDUL HAKIM	:	

MEMORANDUM

Padova, J. **September 24, 2002**

Defendant Khalil Abdul Hakim was convicted by a jury of one count of conspiracy to commit armed robbery, one count of armed bank robbery, one count of using and carrying a firearm in relation to a crime of violence, and one count of using, carrying, and brandishing a firearm in relation to a crime of violence, arising out of the November 28, 2001 armed robbery by two men of the PNC Bank branch located at Main and Hamilton Streets in Norristown, Pennsylvania (the "Bank"). Before the Court are Defendant's "Post-Verdict Motion for a New Trial" and Defendant's pro se "Motion for Arrest of Judgment or in the Alternative for Judgment of Acquittal" and the Government's responses to both Motions. For the reasons that follow, the Court denies said Motions in all respects.

I. MOTION FOR NEW TRIAL

A. Legal Standard

"On a defendant's motion, the court may grant a new trial to that defendant if the interests of justice so require." Fed. R. Crim. P. 33. A new trial should be granted sparingly and only to

remedy a miscarriage of justice. United States v. Copple, 24 F.3d 535, 547 n.17 (3d Cir. 1994).

B. Discussion

Defendant contends that he is entitled to a new trial because inadmissible and highly prejudicial evidence concerning his prior drug use and religious beliefs was introduced at trial, preventing his obtaining a fair trial. Defendant also argues that his conviction should be reversed because the verdict was against the weight of the evidence.

1. Evidence of Prior Drug Use

The Government presented two witnesses at trial, Melvin Boone and James Gray, who identified Defendant as one of two robbers whose images were captured in a bank surveillance photograph during the November 28, 2001 robbery of the Bank. N.T. 6/4/02 at 132-33, 6/5/02 at 52-54. Gray also testified, on cross-examination, that he had given Norristown Police Detective Raymond E. Emrich, Jr., who investigated the robbery, a statement in which he said that he had witnessed Boone selling illegal drugs from his girlfriend's apartment. N.T. 6/5/02 at 58-60. On redirect examination, the Government asked Gray whether he had also informed Detective Emrich, in the same statement, that he had seen Defendant smoke crack. Id. at 77. Defendant objected to this question pursuant to

Federal Rule of Evidence 403.[1] Id. The Government argued that evidence of this portion of Gray's statement should be considered contemporaneously with the rest the statement pursuant to Federal Rule of Evidence 106.[2] Id. The objection was overruled and Gray testified that he had so informed Detective Emrich. Id. Later the same day, the Court reconsidered this ruling and changed it. The Court informed the jury that the ruling had been changed, the objection had been sustained, and the Government's question and Gray's response had been stricken from the record. Id. at 95. The Court also gave the following curative instruction to the jury:

> The Court: You may be seated. Ladies and gentlemen of the jury, there is a ruling that I do want to make you aware of. You'll recall that during the course of the Government's redirect examination of Mr. Gray, reference was made by the Government to a statement that Mr. Gray had made to Detective Emrich concerning the defendant's conduct. Mr. Kozlow on behalf of the defendant objected to that question, I overruled that objection and the contents of a statement made by Mr. Gray to Detective Emrich during that interview, was testified to by Mr. Gray.
>
> I've decided to change my ruling in that regard. I am going to sustain the defendant's

[1]Rule 403 states that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. . . ." Fed. R. Evid. 403.

[2]Rule 106 states that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which out in fairness be considered contemporaneously with it." Fed. R. Evid. 106.

> objection to that testimony. I'm going to strike that testimony of this case completely and I instruct you - and this is an instruction which you must follow – that you are to disregard completely and entirely that question and the answer that was given to that question that has – that is to play no part whatsoever in your consideration with respect to the charges that have been made against this defendant in the indictment.
>
> The only thing that this defendant is on trial for in this courtroom - the only thing he's on trial for - is that charged in the indictment and you know all about that up to now and I don't want anything at all to distract you from that focus and from that analysis. So, therefore, disregard that testimony completely and entirely.

Id. at 95-96.

Defendant now argues that this evidence of Defendant's prior drug use was inadmissible pursuant to Federal Rule of Evidence 404(b). Rule 404(b) provides, in relevant part, as follows:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. . . .

Fed. R. Evid. 404(b). Evidence of prior crimes is not admissible pursuant to Rule 404(b) unless that evidence "is probative of a material issue other than" the character of the defendant and its probative value exceeds the danger that it would unfairly prejudice the defendant. United States v. Sriyuth, 98 F.3d 739, 746 (3d Cir. 1996). Defendant maintains that the evidence of Defendant's prior

drug use was not relevant to proof of the bank robbery charged in the indictment and that there is a great risk that this evidence unfairly prejudiced Defendant by influencing the jury to convict him because he had the propensity to commit unlawful acts.

In deciding whether to grant a new trial based upon an incorrect admission of evidence at trial, the Court must determine, taking into consideration any curative instruction, whether that admission substantially prejudiced defendant:

> An incorrect admission of evidence, however, does not automatically mandate a new trial. There must be prejudice that affects a substantial right of the defendant. In reviewing the district court's handling of the evidence that was subsequently stricken from the record, we presume that the jury will follow a curative instruction unless there is an overwhelming probability that the jury will be unable to follow it and a strong likelihood that the effect of the evidence would be devastating to the defendant.

United States v. Newby, 11 F.3d 1143, 1147 (3d Cir. 1993) (citations omitted). "Moreover, under most circumstances, an instruction to the jury to disregard a question or response will cure any prejudice resulting from that question or response." United States v. Giampa, 904 F. Supp. 235, 302 (D.N.J. 1995) (citations omitted). Defendant has not demonstrated that there is an overwhelming probability that the jury was not able to follow the Court's curative instruction. Without determining whether Gray's statement with respect to Defendant's prior drug use was admissible at trial, the Court finds that any prejudice to

Defendant was cured by striking this evidence from the record shortly after its admission and by the instruction given to the jury, which specifically instructed the jurors that the Government's question and Gray's answer could not be considered in their deliberations. See United States v. Johnson, Nos. 00-2165, 01-2529, 2002 WL 1964943, at *7 (3d Cir. Aug. 26, 2002) (determining that Defendant was not denied his right to a fair trial by a prosecutor's improper question and the witness's response where defense counsel immediately objected and the district court promptly gave a curative instruction to the jury). Accordingly, Defendant's Motion for New Trial based upon the allegedly improper admission of evidence regarding prior drug use is denied.

2. Evidence of Defendant's Religious Beliefs

Defendant also maintains that he is entitled to a new trial because evidence admitted at trial that he is a member of the Islamic faith, and the prosecutor's comment on that evidence during closing argument, was so prejudicial, in the aftermath of the September 11, 2001 terrorist attacks, that it made the jury believe it was likely that he "committed the bank robbery as charged because he was a practicing Muslim." (Def.'s Mem. at 15.) Defendant argues that the evidence of his religious beliefs has no relevance to the crime charged and was not necessary to the Government's case. Defendant also claims that the Government's

reference to his beliefs in closing argument constituted prosecutorial misconduct.

The only evidence before the jury of Defendant's religious affiliation came through the testimony of Boone. Boone testified that he had known Defendant for approximately 10 years and that they were very close friends. N.T. 6/4/02 at 92. In describing his long relationship with Defendant, Boone testified as follows:

> Q. Would you describe for the jury – or characterize if you will – your relationship with the defendant, close friends or –
>
> A. Yes. We were very close friends. As a matter of fact, spiritually, we was – we used to – we used to go to Jumal, which is our spiritual classes together.
>
> Q. All right. When you say spiritual, what particular branch of religion do you subscribe to?
>
> A. Islam – Muslims.
>
> Q. Muslims?
>
> A. Right.
>
> Q. So, you attended spiritual classes together?
>
> A. Right.
>
> Q. What role if any, did he play in the classroom setting?
>
> A. He was very intelligent, he was the Eman [sic], that was, like, a head priest.
>
> Q. Head Priest.
>
> A. Yes.

> Q. Do you know anything about the defendant's educational background?
>
> A. A little bit. He's very intelligent. He has degrees. He's very, very intelligent, as a matter of fact.
>
> Q. Now, I want to explore his role as Eman [sic] – I believe as you call it – and what position is that now in the Muslim faith?
>
> A. That would be, like, head position to – like a teacher in the class. In other words, he would be the head man of the Jumal, he would read the Koran and explain to us, different scenarios in the book. And he would make prayer and stuff like that, lead the prayer.
>
> Q. Was he able to do this in English or Arabic?
>
> A. Both – both.

N.T. 6/4/02 at 92-93. This testimony both supported Boone's identification of Defendant and explained why Boone brought Defendant into his business, Boone's Moving and Hauling, as a partner to handle the financial aspects of the business. N.T. 6/4/02 at 93-98. Defendant did not object to any of the Government's questions or Boone's answers during the trial.

The Government referred to Defendant's religious beliefs in closing argument as follows:

> Now, he also told you that he had met the defendant, he had known him for about ten years, they were both members of the same religious community, Muslims. The defendant occupied the role of the Iman [sic], the spiritual leader of the congregation and that he looked up to him, he admired him. He said, he was teacher, he was the leader.

> And as you will see from the defendant's passport and I – and I urge you to take the time to look at this passport, not only from the standpoint of identification, but the facial hairs that was [sic] described by Seqora Ward and the skin tone color. But you may remember that I asked the question of Mr. Boone, he's the spiritual leader? Yes. He speaks Arabic and English. And if you will look in the passport, you will notice that in 1996, the defendant visited Saudi Arabia and there are a number of other stamps in the passport, all showing that he's a worldly man, he's well traveled.

N.T. 6/5/02 at 100. The Government's references were relevant to Boone's identification of Defendant and partnership with him in Boone's Moving and Hauling. Defendant did not object to this reference to his religious affiliation at trial.

"In the absence of plain error, matters not called to the attention of the trial judge cannot be subsequently raised in the post trial stages of the proceeding." United States v. Jones, 404 F. Supp. 529, 539 (E.D. Pa. 1975) (citations omitted). Federal Rule of Criminal Procedure 52 provides that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Fed. R. Crim. P. 52(b). The plain error standard requires:

> (1) an error; (2) which is clear or obvious; and (3) which affects substantial rights (i.e., it affected the outcome of the district court proceedings). Because Rule 52(b) is permissive, we only correct a plain error which (a) causes the conviction or sentencing of an actually innocent defendant, or (b) seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.

United States v. Navarro, 145 F.3d 580, 584-85 (3d Cir. 1998) (citations omitted).

Evidence of a person's religious beliefs and affiliation "is properly admissible where probative of an issue in a criminal prosecution." United States v. Beasely, 72 F.3d 1518, 1527 (11th Cir. 1996) (citing United States v. Sun Myung Moon, 718 F.2d 1210, 1233 (2d Cir. 1983)). Evidence of Defendant's religious affiliation was relevant to Boone's identification of Defendant as one of the two men who robbed the Bank and was necessary background to Boone's testimony concerning Defendant's involvement with Boone's Moving and Hauling. There is nothing improper about the Government's reference to this evidence in closing argument where it is probative of an issue before the jury, the identification of Defendant as one of the two men who robbed the Bank.

Defendant's argument that any reference to Defendant's religious affiliation would cause the jury to "conclude that he robbed the bank in order to further some nefarious, terrorist-related agenda" (Def.'s Mem. at 15) is rank speculation. Neither Boone's testimony regarding Defendant's position as a teacher of his faith nor the Government's comments regarding his religious affiliation are pejorative. Moreover, even if the admission of this evidence was error, Defendant has not presented any evidence that Defendant is actually innocent of the charges against him. Defendant's opportunistic references to anti-Muslim bias engendered

by the events of September 11, 2001 also does not demonstrate that the evidence of his religious beliefs seriously affected the fairness, integrity, or public reputation of his trial. Navarro, 145 F.3d at 584-85. Accordingly, the Court finds that the admission of evidence of Defendant's religious affiliation, and the Government's reference to that evidence in closing, were not plain error requiring a new trial. Defendant's Motion for New Trial based upon references to his religious affiliation is, therefore, denied.

3. Sufficiency of the Evidence

Defendant argues that the verdict in this case was against the weight of the evidence because the evidence identifying Defendant as one of the two robbers was insufficient to support his conviction. Defendant maintains that his conviction should be reversed because the bank manager, who gave a description of one of the robbers, did not make an identification of him; the bank surveillance videotapes and photographs were grainy, making it difficult to identify the robbers; and the identification witnesses, Gray and Boone, had extensive criminal histories and harbored ill feelings toward him.

Although Defendant makes this argument as part of his Motion for New Trial, a motion based upon insufficiency of the evidence is considered pursuant to Federal Rule of Criminal Procedure 29. Rule 29 provides that the court "shall order the entry of judgment of

acquittal of one or more offenses charged in the indictment . . . if the evidence is insufficient to sustain a conviction of such offense or offenses." Fed. R. Crim. P. 29(a) and (c). A post-verdict motion for judgment of acquittal is considered as follows:

> a district court must review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence. The court is required to draw all reasonable inferences in favor of the jury's verdict. Thus, a finding of insufficiency should be confined to cases where the prosecution's failure is clear.

United States v. Smith, 294 F.3d 473, 476 (3d Cir. 2002). A defendant bears a very heavy burden when challenging the sufficiency of the evidence supporting a jury's verdict. United States v. Dent, 149 F.3d 180, 187 (3d Cir. 1998). The evidence must be weighed in the light most favorable to the government and the verdict upheld so long as "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. Voigt, 89 F.3d 1050, 1080 (3d Cir. 1996). The defendant cannot "simply reargue [his] defense." United States v. Smith, 186 F.3d 290, 294 (3d Cir. 1999). The Court must find there is no evidence in the record, regardless of how it is weighed, from which the jury could have found the defendant guilty. United States v. McNeill, 887 F.2d 448, 450 (3d Cir. 1989). The defendant must overcome the jury's special province in matters involving witness credibility, conflicting testimony, and drawing

factual inferences from circumstantial evidence. United States v. McGlory, 968 F.2d 309, 321 (3d Cir. 1992). The Court cannot weigh the evidence or make credibility determinations. United States v. Giampa, 788 F.2d 928, 934-35 (3d Cir. 1985).

The following identification evidence was presented by the Government at trial. Seqora Ward, the manager of the Bank, testified that, on November 28, 2001, at the time of the robbery, she was sitting where she had an unobstructed view of the two robbers as they entered the Bank. N.T. 6/3/02 at 95-98. She also testified that she got a clear look at the face of the second robber:

> Q. Now, as the two robbers entered the bank, ma'am, were you able to see the faces of the robbers?
>
> A. Yes, I was.
>
> Q. Which one of the robber's faces were you able to see?
>
> A. Robber No. 2.
>
> Q. And why were you able to see his face and not Robber No. 1?
>
> A. Robber No. 2 made eye contact with me. I was able to see his face clearly, his face was not covered when he walked in the bank.
>
> * * *
>
> Q. Well, tell us anything you can remember in terms of characteristics?
>
> A. He was the same complexion as me.
>
> Q. And you would describe that for the record?

> A. Brown – light brown.
>
> Q. Okay. And what else did you notice?
>
> A. He had close-cut facial hair. He has distinctive marks – wrinkle marks – on his forehead. He was heavyset, his build was heavyset, short and stockier than Robber No. 1.

Id. at 99-101. The jury was in a position to see Defendant and determine whether this description fit him. The jury was also informed that Ward was never asked to identify Defendant. Id. at 109.

Gray and Boone both testified, from their close personal and business associations with Defendant, that he was the shorter man shown in Government Exhibit 5, a Bank surveillance photograph of the robbers walking into the Bank immediately prior to the robbery. Boone testified as follows:

> Q. Now, Mr. Boone, when you looked at Government's Exhibit 5A, I asked you whether or not you could identify anyone in that photograph and this particular blowup is an enlargement of Government's Exhibit No. 5 and you said, the man in the back.
>
> A. Yes.
>
> Q. Which man are you referring to?
>
> A. The gentleman in the sweat suit.
>
> * * *
>
> Q. And who is that person, sir?
>
> A. It's Khalil.
>
> Q. And how are you able to recognize him?

A. He worked with me for a long time and I known him for a long time and that's just – that's Khalil.

N.T. 6/3/02 at 132-33. Gray also testified that Defendant was the man in Government Exhibit 5:

Q. Take a look at Government's Exhibit No. 5, sir, and tell us whether or not you can identify that exhibit?

A. Yes, I can.

Q. And how are you able to identify it?

A. I know the man in the picture.

* * *

Q. No, you say you know the man in the photograph, who is that person, if you know?

A. That's Khalil.

* * *

Q. And how are you able to tell, sir, from having looked at this photograph that this is the person that you know as Khalil?

A. I worked with him and I knew what he looked like.

Q. You worked with him, did you see him every day?

A. Pretty much when we were working.

N.T. 6/4/02 at 52-53. Government Exhibit 5 was entered into evidence and the jury was able to make its own determination of whether it was too grainy to support Gray's and Boone's identification of Defendant as the man whose likeness was captured by the surveillance photograph. Other surveillance photos and the

surveillance videotape were also shown to the jury and entered into evidence. Moreover, extensive evidence of Gray's and Boone's criminal histories, drug use, and possible ill feelings toward Defendant was entered into evidence and was available to the jury for determination of the credibility of those witnesses. N.T. 6/3/02 at 90-91, 146-147, 149-154, 161-162; N.T. 6/4/02 at 49, 51-52, 54-55, 58-62, 66-76.

The jury also heard other evidence, not connected to Ward, Gray or Boone, which connected Defendant to the November 28, 2001 robbery of the Bank through a pickup truck which bore a license plate registered to Defendant and which was parked across the street from the Bank at the time of the robbery. Robert Petersohn testified that he works for Sterling Auto Body which is located across the street from the Bank. N.T. 6/3/02 at 32. He further testified that on November 28, 2001, at the time of the robbery, he was outside of Sterling Auto Body, having a cigarette break, and saw a black, early to mid '80s, Chevy S10 pickup parked next to his vehicle. Id. at 32-34. He took a close look at the Chevy S10 and saw that it had a Boone's Moving sign on the door and swirly pinstripes behind the door handles on the driver's and passenger's sides of the truck. Id. at 35-38. He later saw the black Chevy S10 speeding off down the alleyway which is the only exit from Sterling Auto Body's parking lot. Id. at 38-42. He informed the police of what he had seen, and was taken by the police to view a

black Chevy S10 which he identified as the one he had seen parked next to his vehicle at the time of the robbery. Id. at 42-43. He also testified that Government Exhibit 16, a photograph of a Chevy S10, was a picture of the Chevy S10 he had seen in the Sterling Auto Body parking lot and that he recognized that pickup because: "it's got the two different sets of wheels, it's got the pinstripe on the back by the back of the door. I remember on the fender – on the front of the fender – it had them, too." Id. at 43. He further testified that he remembered this vehicle because "I'm a Chevy fanatic and I know my pickup trucks. My dad actually has one, too. I remembered the swirly pinstripes on the door and the fender. . . . And the two different sets of wheels that I told you about. . . . The two different sets of wheels and the Boone's Moving sign." Id. at 44-45.

Mr. Petersohn's co-worker, Christopher Robbins, testified that, at the time of the robbery, he looked out of his window and saw two men running from the vicinity of the Bank, across the street and into the Sterling Auto Body parking lot. N.T. 6/4/02 at 71-72. He also saw one of the men get into an early '80s, black, Chevy pickup truck and drive into the alley. Id. at 73. He was able to see the truck long enough to see that it was black and had a white magnetic business sticker on the door. Id. He was taken by the police to view an "early '80s model black Chevy pickup with the sticker on the side of it." Id. at 75-76. He told the police

that, although he could not positively identify the truck, "it was basically the same model truck, same color, same magnetic sticker on the door." Id. at 76. Police Officer Todd Dillon of the Norristown Police Department testified that he ran the license plate on the black Chevy S10 pictured in Government Exhibit 16 through the Pennsylvania Department of Motor Vehicles and determined that the license plate on that pickup was registered to Defendant. N.T. 6/4/02 at 195-98. The jury also heard evidence that three days after the robbery, Defendant purchased a used automobile using $6,700.00 in cash, nearly half the amount taken from the Bank during the robbery. N.T. 6/3/02 at 104, 6/4/02 at 20-21. The car salesman testified that the money used by Defendant to pay for the car was mostly crisp, new, one hundred dollar bills. N.T. 6/4/02 at 17, 26-27.

The Court concludes that the evidence submitted at trial was sufficient for any rational jury to determine the credibility of the Government's witnesses and find that the Defendant was one of the two men who robbed the Bank on November 28, 2001. Accordingly, Defendant's Motion for New Trial based upon insufficient evidence to identify Defendant as one of the Bank robbers is denied.

C. Conclusion

For the foregoing reasons, the Court finds that the curative instruction given to the jury cured any prejudice to Defendant by the introduction of evidence of his prior drug use. The Court also

finds that the introduction of evidence of Defendant's religious affiliation was not clear error. The Court further finds that there was sufficient evidence upon which the jury could find, beyond a reasonable doubt, that Defendant was one of the two men who robbed the Bank on November 28, 2001. Accordingly, Defendant's Motion for New Trial is denied.

II. MOTION FOR ARREST OF JUDGMENT OR, IN THE ALTERNATIVE, FOR JUDGMENT OF ACQUITTAL

A. Motion for Arrest of Judgment

Federal Rule of Criminal Procedure 34 provides two grounds upon which the court shall arrest judgment: "if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged." Fed. R. Crim. P. 34. Although Defendant's Motion is entitled "Motion for Arrest of Judgment," the Motion does not present any basis upon which the judgment should be arrested. Although Defendant claims that the indictment was founded upon perjured testimony, the Motion presents only supposition that perjured testimony was presented to the grand jury that returned the indictment. Moreover, Defendant does not claim that either the indictment does not charge an offense or that the court was without jurisdiction of the offenses charged in the indictment. Accordingly, to the extent that Defendant's pro se Motion was intended to be considered as a motion for arrest of judgment pursuant to Rule 34, it is denied.

B. Motion for Judgment of Acquittal

Defendant argues that there is insufficient evidence to sustain the verdict against him because Government witnesses Boone and Gray were biased against him, had criminal records, used or sold drugs, testified falsely, and were compensated by the government for their testimony. To the extent that this argument was made in Defendant's Motion for New Trial, the Court finds that the evidence submitted at trial was sufficient for any rational jury to determine the credibility of the Government's witnesses and is sufficient to sustain Defendant's conviction. To the extent that Defendant has attempted to bolster his argument by alleging that Gray and Boone perjured themselves either before the grand jury or at trial, or that they were compensated by the Government for their testimony, the Court finds that Defendant has submitted no evidence whatsoever in support of these arguments and Defendant's bare allegations of perjury and compensation are insufficient to support judgment of acquittal in this case.

Defendant also argues that he is entitled to judgement of acquittal because of prosecutorial misconduct during closing argument. Defendant alleges that the Government stated during closing argument that he smokes crack. However, read in context, the statement in question, "[y]ou heard a lot of testimony, this person's [sic] smokes crack and what have you," clearly referred to evidence of Gray's drug use, not to Defendant. N.T. 6/5/02 at 113.

Accordingly, to the extent Defendant bases his Motion upon prosecutorial misconduct, the motion is denied.

Defendant also maintains that he is entitled to judgment of acquittal because the Court failed to instruct the jury that if they find that a witness has testified falsely to a material fact, they are at liberty to either disregard that witness's entire testimony, or believe such portions of the testimony as they see fit. However, that instruction was given to the jury as follows:

> If a person is shown to have knowingly testified falsely concerning any important or material matter, then you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject all of that testimony or you may give it such weight or credibility as you may think it deserves, it is up to you.

N.T. 6/5/02 at 153. Defendant's Motion is, therefore, denied to the extent it is based upon failure of the Court to instruct the jury in this regard.

Defendant also argues that the verdict in this case is subject to collateral attack because he is actually innocent. To the extent that Defendant has attempted to move for writ of habeas corpus, his claim is not yet ripe. Defendant also claims that he is entitled to judgment of acquittal because prejudicial evidence regarding his identification was admitted at trial even though it should have been excluded pursuant to Federal Rule of Evidence 403. However, Defendant does not specify the testimony or exhibits upon which this claim is based or state whether an objection was made to

such evidence at trial. The Court cannot grant a motion for judgment of acquittal based upon unspecified errors. Accordingly, the Motion is denied.

C. Conclusion

Defendant has asserted no basis in his pro se Motion upon which the Court could arrest the judgment against him or enter judgment of acquittal. Accordingly, Defendant's "Motion for Arrest of Judgment or in the Alternative for Judgment of Acquittal" is denied.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL No. 02-CR-131
	:	
KHALIL ABDUL HAKIM	:	

ORDER

AND NOW, this 24th day of September, 2002, upon consideration of Defendant's Motion for New Trial (Docket No. 70), Defendant's pro se "Motion for Arrest of Judgment or in the Alternative for Judgment of Acquittal" (Docket No. 71), the Government's Responses to both Motions, and the Trial Record, **IT IS HEREBY ORDERED** that said Motions are **DENIED** in all respects.

BY THE COURT:

_____
John R. Padova, J.